الخلاف بين العلماء أسبابه وموقفنا منه

للشيخ محمد بن صالح العثيمين (رحمه الله تعالى)

Differences Of Opinion Amongst The Scholars.

Their Causes and Our Positions Towards Them.

By

Shaykh Muhammad ibn Saalih al-Uthaymeen

(rahimahullaah)

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Transliteration Table

Consonants

ء	'		ض	d
ب	b		ط	t
ت	t		ظ	dh
ث	th		ع	’
ج	j		غ	gh
ح	h		ف	f
خ	kh		ق	q
د	d		ك	k
ذ	dh		ل	l
ر	r		م	m
ز	z		ن	n
س	s		ه	h
ش	sh		و	w
ص	s		ي	y

Vowels

َ	a		َا	aa
ُ	u		ُو	oo
ِ	i		ِي	ee

Publisher's Note

All praise is for Allaah, Lord of the worlds. Peace and Prayers be upon Muhammad, his family, his Companions and all those who follow in their footsteps until the Last Day.

This is the English translation of the booklet "*Al-Khilaafu Baynal 'Ulamaa Asbaabuhoo wa Mawqifunaa Minhoo*" by the great scholar Shaykh Muhammad Ibn Saalih al-'Uthaymeen, may Allaah preserve him and increase him in good.

It is hoped that this book, although small in size, will have an impact in explaining this vital subject. *Inshaallaah* one who studies this book will increase in his respect for the scholars and in his tolerance towards his brothers who hold valid opinions which may differ from his.

May Allaah reward all the brothers and sisters who helped in the publication of this book, particularly the author for providing useful clarifications on a number of points and also the translator for his hard work and very useful footnotes.

Al-Hidaayah Publishing and Distribution

Biography of Shaykh Muhammad ibn Saalih Al-'Uthaymeen

• His lineage: He is Aboo 'Abdullaah, Muhammad ibn Saalih ibn Muhammad ibn 'Uthaymeen al-Wuhaybee at-Tameemee.
• His birth: He was born in the town of 'Unayzah on the 27th of the blessed month of Ramadaan in the year 1347 H.
• His early life: He recited the Noble Qur'aan with his maternal grandfather 'Abdur-Rahmaan ibn Sulaymaan Aal Daamigh, *rahimahullaah*. He first memorised the entire Qur'aan, and then continued to seek knowledge. He learned writing, arithmetic and other disciplines. Also two students of Shaykh 'Abdur-Rahmaan as-Sa'dee, *rahimahullaah*, took up the task of teaching small children; one of them was Shaykh 'Alee as-Saalihee, and the other was Shaykh Muhammad ibn 'Abdul-'Azeez al-Mutawwa', *rahimahumullaah* under whom Shaykh Ibn 'Uthaymeen studied the abridgement of *al-'Aqeedatul-Waasitiyyah* of Shaykh 'Abdur-Rahmaan as-Sa'dee, and *Minhaajus-Saalikeen* in *Fiqh*, also by Shaykh 'Abdur-Rahmaan and *al-Ajroomiyyah* and *al-Alfiyyah*.

He studied *fiqh* and the laws of inheritance with Shaykh 'Abdur-Rahmaan ibn 'Alee ibn 'Awdaan. With Shaykh 'Abdur-Rahmaan ibn Naasir as-Sa'dee, who is considered his first Shaykh, since he remained with him for some time, he studied *tawheed, tafseer, hadeeth, fiqh*, the principles of *fiqh* (*usoolul-fiqh*), laws of inheritance, sciences of *hadeeth*, Arabic Grammar (*nahw*) and morphology (*sarf*).

Indeed the noble Shaykh was highly regarded by Shaykh 'Abdur-Rahmaan, *rahimahullaah*, and when Shaykh Muhammad's father moved to Riyadh he initially expressed a desire that his son should do likewise. However Shaykh 'Abdur-Rahmaan as-Sa'dee, *rahimahullaah*, wrote to him: "This is not possible, rather we hope

that Muhammad will remain with us and benefit." Shaykh Muhammad, *hafidhahullaah*, himself said: "I was greatly influenced by him in his manner of teaching and presenting knowledge and making it understandable to the students by use of examples and explanations. I was also greatly influenced by his good manners. Indeed Shaykh 'Abdur-Rahmaan, *rahimahullaah*, had excellent manners and character along with a great deal of knowledge and worship. He would joke pleasantly with the young and laugh with the elders, and he was the most excellent person in manners that I have seen."

He also studied under the eminent and noble Shaykh 'Abdul-'Azeez ibn Baaz who is considered his second Shaykh. He began studying under him by studying *Saheeh al-Bukhaaree*, some of the works of Shaykh-ul-Islaam Ibn Taymiyyah and some of the books of *fiqh*. Shaykh Muhammad says: "I was influenced by Shaykh 'Abdul-'Azeez ibn Baaz, *hafidhahullaah*, with regard to the great attention he gave to *hadeeth*, and I was also influenced by his manners and the way in which he makes himself available to and puts himself at the service of the people."

In the year 1371 H he began teaching in the congregational mosque, and when the educational institutes were opened in Riyadh he joined them in the year 1372 H. The Shaykh, *hafidhahullaah*, says: "I entered the educational institute in the second year and took up the studies upon the advice of Shaykh 'Alee as-Saalihee and having been given permission for that by Shaykh 'Abdur-Rahmaan as-Sa'dee. The institute at that time had two sections: a general section and a higher level. I joined the higher level and it was also the case that anyone who wanted to complete their studies more quickly could do so by studying the following years work in the holiday period, and then take the exams at the start of the following year. If he passed the exam he could then pass on to the next year after that. So by this means I studied in a shorter time period."

After two years he qualified and was given a teaching position in the educational institute of 'Unayzah, whilst continuing his own studies in affiliation with the College of *Sharee'ah*, and continuing his studies under Shaykh 'Abdur-Rahmaan as-Sa'dee.

When the noble Shaykh 'Abdur-Rahmaan as-Sa'dee, *rahimahullaah*, died, Shaykh Muhammad was made *imaam* of the main congregational mosque of 'Unayzah, and took up teaching in the national library of 'Unayzah, in addition to teaching in the educational institute. He later moved to teaching in the College of *Sharee'ah* and the College of *Usoolud-Deen* (the Fundamentals and Principles of the Religion) in the Qaseem branch of Imaam Muhammad ibn Sa'ud Islamic University, which he continues to this day. He is also a member of the council of eminent scholars of the Kingdom of Saudi Arabia, and the Shaykh, *hafidhahullaah*, is very active in calling to Allaah, the Mighty and Majestic, and in enlightening the callers in every place. He has made great efforts in this field.

It is also worthy of mention that the noble Shaykh Muhammad ibn Ibraaheem, *rahimahullaah*, offered him and encouraged him to take the position of judge. Indeed he even sent out the decision that he had been given the position as head of the *Sharee'ah* court in Ahsaa, but he requested that he should be excused from taking the position. After a number of requests and personally speaking to him, the Shaykh, *rahimahullaah*, granted him his wish not to take up the post.

His works: He has written around forty different works, some larger books and some treatises. These will, if Allaah wills, be combined in a single collection of his verdicts and treatises.

In the name of Allaah, the Most Merciful, the Bestower of Mercy.

Introduction

All praise is for Allaah. We praise Him, seek His help and forgiveness and turn to Him in repentance. We seek refuge in Allaah from the evil of our selves and the wickedness of our own deeds. Whomsoever Allaah guides, cannot be lead astray and whomsoever Allaah misguides, none can guide him. I bear witness that none has the right to be worshipped except Allaah, alone without partner, and I bear witness that Muhammad is His Slave and Messenger; may Allaah praise him and send peace upon him, his household, his Companions and all those who follow them in righteousness till the Day of Judgement.

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ ٱتَّقُوا۟ ٱللَّهَ حَقَّ تُقَاتِهِۦ وَلَا تَمُوتُنَّ إِلَّا وَأَنتُم مُّسْلِمُونَ ﴿١٠٢﴾

O you who believe! Fear Allaah as He should be feared,[1] and die not except as Muslims.[2]

يَٰٓأَيُّهَا ٱلنَّاسُ ٱتَّقُوا۟ رَبَّكُمُ ٱلَّذِى خَلَقَكُم مِّن نَّفْسٍ وَٰحِدَةٍ وَخَلَقَ مِنْهَا
زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَآءً ۚ وَٱتَّقُوا۟ ٱللَّهَ ٱلَّذِى تَسَآءَلُونَ
بِهِۦ وَٱلْأَرْحَامَ ۚ إِنَّ ٱللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾

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[1] Ibn Mas'ood, *radiyallaahu 'anhu*, commentated:"He should be obeyed and not disobeyed, remembered and not forgotten, and he should be thanked and not be shown ungratefulness."

[2] Soorah Aal 'Imraan (3):102

O mankind! Fear your Lord, Who created you from a single soul, and from him, created his wife, and from them both, brought forth many men and women. Fear Allaah through Whom you request your mutual rights and do not sever relations of the womb (i.e. kinship). Surely, Allaah is forever an observer over you all.[3]

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ ٱتَّقُوا۟ ٱللَّهَ وَقُولُوا۟ قَوْلًا سَدِيدًا ﴿٧٠﴾ يُصْلِحْ لَكُمْ أَعْمَٰلَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ ۗ وَمَن يُطِعِ ٱللَّهَ وَرَسُولَهُۥ فَقَدْ فَازَ فَوْزًا عَظِيمًا ﴿٧١﴾

O you who believe! Fear Allaah and always speak the truth. (If you do so) He will direct you towards righteous actions and forgive you your sins. Who-ever obeys Allaah and His Messenger has indeed achieved a great success.[4]

This topic of discussion may cause many people to ask questions; some may even query, "*Why this topic and this title, when there could well exist other matters of the Religion which are more im-portant?*" But this topic, especially in this time of ours, occupies the minds of many people. I do not only imply the common people, but include amongst them students of knowledge. This has arisen as a result of an increase in the dispersion of legal rulings amidst the people via the many forms of media. Consequently, the differences between the rulings of this person and that person have become a source of confusion, or even more so: a source of doubt, to many people, especially the layman who does not comprehend the origins of the differences.

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[3] Soorah an-Nisaa' (4):1

[4] Soorah al-Ahzaab (33):70-71

Due to this, I decided, and from Allaah I seek aid, to discuss this issue which in my opinion is of great importance to the Muslims. From the blessings of Allaah, the Most High, upon this *ummah* is that the differing in this *ummah* did not occur in the fundamentals of the religion and its primary sources[5]. Differing only occurred in issues which do not touch upon the real unity of the Muslims and the presence of disagreement is a reality which must be. I have structured and summarised the main points which I would like to discuss as follows:

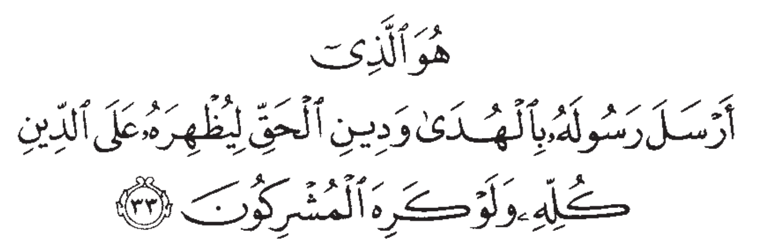
Every Muslim knows, as a result of comprehending the Book of Allaah and the *Sunnah* of His Messenger (ﷺ), that Allaah sent Mu<u>h</u>ammad (ﷺ) with the Guidance and Religion of Truth.[6]

This truth embodies the fact that the Messenger of Allaah (ﷺ) has explained this religion in a clear and sufficient manner, which is in no need of any further clarification. Because the very meaning of the word '*guidance*' negates deviation and all its connotations, and

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[5] It is well known that many of the sects of innovation like the *Mu'tazilah* and the *Ashaai'rah* contested some of the sources of the *Sharee'ah*. This however does not expel them from being sects within this *ummah* as they believe in these sources in a general way and do not categorically deny them. Likewise,their agreement on the fundamentals such as the pillars of the religion being five and so on. This is the intention of the Shaykh here.

[6] Allaah says,



It is He Who has sent His Messenger with the Guidance and the Religion of Truth, to make it prevail over all religions even though the polytheists hate it.

[Soorah at-Tawbah (9):33]

likewise, the phrase '*religion of truth*' negates every false religion which Allaah, the Most High, is not pleased with; the Messenger of Allaah (ﷺ) was sent with this Guidance and Religion of Truth.

During his life-time, the people used to refer directly to him when in dispute, so he would judge between them and make plain the truth, regardless of whether the dispute occurred in connection to the Qur'aan or in matters of which their judgements had not yet been revealed; thereupon, verses would be revealed clarifying the issue.

How often do we read in the Qur'aan, يَسْـَٔلُونَكَ عَنِ **"They ask you regarding..."** this and that. Allaah, the Most High, would then reply to His Prophet with a clear answer and order him to convey it to the people.

Allaah, the Most High, says,

يَسْـَٔلُونَكَ مَاذَآ أُحِلَّ لَهُمْۖ قُلْ أُحِلَّ لَكُمُ ٱلطَّيِّبَٰتُۙ وَمَا عَلَّمْتُم
مِّنَ ٱلْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ ٱللَّهُۖ فَكُلُوا۟ مِمَّآ أَمْسَكْنَ
عَلَيْكُمْ وَٱذْكُرُوا۟ ٱسْمَ ٱللَّهِ عَلَيْهِۖ وَٱتَّقُوا۟ ٱللَّهَۚ إِنَّ ٱللَّهَ سَرِيعُ ٱلْحِسَابِ

They ask you as to what is lawful (food) for them. Say, 'Lawful unto you are all things good and pure (*halaal*); and what you have taught your trained hunting animals (to catch) in the proper manner directed to you by Allaah, eat what they catch for you but pronounce the name of Allaah over it; and fear Allaah, for Allaah is indeed swift in taking account'.[7]

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[7] Soorah al-Maa'idah (5):4

وَيَسْـَٔلُونَكَ مَاذَا يُنفِقُونَ قُلِ ٱلْعَفْوَ ۗ
كَذَٰلِكَ يُبَيِّنُ ٱللَّهُ لَكُمُ ٱلْـَٔايَٰتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ﴿٢١٩﴾

And they ask you as to what they should spend. Say, 'What is beyond your needs.' Thus, Allaah makes clear to you all His laws in order that you may give thought.[8]

يَسْـَٔلُونَكَ عَنِ ٱلْأَنفَالِ ۖ قُلِ ٱلْأَنفَالُ لِلَّهِ وَٱلرَّسُولِ ۖ فَٱتَّقُوا۟ ٱللَّهَ
وَأَصْلِحُوا۟ ذَاتَ بَيْنِكُمْ ۖ وَأَطِيعُوا۟ ٱللَّهَ وَرَسُولَهُۥٓ إِن كُنتُم
مُّؤْمِنِينَ ﴿١﴾

They ask you about the spoils of war. Say: 'The spoils of war are for Allaah and the Messenger.' So fear Allaah and set straight all matters of difference amongst yourselves. And obey Allaah and His Messenger if indeed you are believers.[9]

يَسْـَٔلُونَكَ
عَنِ ٱلْأَهِلَّةِ ۖ قُلْ هِىَ مَوَٰقِيتُ لِلنَّاسِ وَٱلْحَجِّ ۗ وَلَيْسَ ٱلْبِرُّ
بِأَن تَأْتُوا۟ ٱلْبُيُوتَ مِن ظُهُورِهَا وَلَٰكِنَّ ٱلْبِرَّ مَنِ ٱتَّقَىٰ ۗ
وَأْتُوا۟ ٱلْبُيُوتَ مِنْ أَبْوَٰبِهَا ۚ وَٱتَّقُوا۟ ٱللَّهَ لَعَلَّكُمْ
تُفْلِحُونَ

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[8] Soorah al-Baqarah (2):219

[9] Soorah al-Anfaal (8):1

They ask you about the new moons. Say, 'They are signs to indicate fixed periods of time for mankind and for the pilgrimage.' It is not righteousness that you enter houses from the back but righteousness is (the quality of) the one who fears Allaah; So enter houses through their proper doors, and fear Allaah so that you may be successful.[10]

يَسْـَٔلُونَكَ عَنِ ٱلشَّهْرِ
ٱلْحَرَامِ قِتَالٍ فِيهِ ۖ قُلْ قِتَالٌ فِيهِ كَبِيرٌ ۖ وَصَدٌّ عَن سَبِيلِ ٱللَّهِ
وَكُفْرٌۢ بِهِۦ وَٱلْمَسْجِدِ ٱلْحَرَامِ وَإِخْرَاجُ أَهْلِهِۦ مِنْهُ أَكْبَرُ
عِندَ ٱللَّهِ ۚ وَٱلْفِتْنَةُ أَكْبَرُ مِنَ ٱلْقَتْلِ ۗ وَلَا يَزَالُونَ يُقَٰتِلُونَكُمْ
حَتَّىٰ يَرُدُّوكُمْ عَن دِينِكُمْ إِنِ ٱسْتَطَٰعُوا۟ ۚ وَمَن يَرْتَدِدْ
مِنكُمْ عَن دِينِهِۦ فَيَمُتْ وَهُوَ كَافِرٌ فَأُو۟لَٰٓئِكَ حَبِطَتْ
أَعْمَٰلُهُمْ فِى ٱلدُّنْيَا وَٱلْءَاخِرَةِ ۖ وَأُو۟لَٰٓئِكَ أَصْحَٰبُ ٱلنَّارِ ۖ
هُمْ فِيهَا خَٰلِدُونَ ﴿٢١٧﴾

[10] Soorah al-Baqarah (2):189

They ask you concerning fighting in the sacred months. Say, 'Fighting therein is a great transgression, but preventing mankind from following the way of Allaah, to disbelieve in Him, to prevent access to *Al-Masjid Al-Haraam* (in Makkah) and to drive out it's inhabitants are greater transgressions; and *fitnah* is worse than fighting. And they will never stop fighting you until they turn you back from your religion if they can. And whosoever amongst you turns back from his religion and dies a disbeliever, then his deeds will be lost in this life and in the Hereafter, and they will be dwellers of the Fire, abiding therein forever.'[11]

However, after the death of the Messenger (ﷺ), the *ummah* differed on legal rulings of the *Sharee'ah.* These rulings, however, did not impose on the principles of the *Sharee'ah* nor it's root sources.[12]

We all know for definite that none of the scholars who are trusted and relied upon with respect to their knowledge, trustworthiness and religion, intentionally oppose that which the Book of Allaah and the *Sunnah* of His Messenger (ﷺ) indicate. As, whoever is typified with knowledge and religion, then their guiding principle must be attaining the truth, and whosoever's intention is to seek the truth then Allaah will make it easy for him; listen to the saying of Allaah, the Most High,



[11] Soorah al-Baqarah (2):217

[12] i.e., the existence of disagreement within subsiduary issues do not affect nor harm the fundamentals of the religion nor it's root sources which are the Qur'aan and *Sunnah*.

And we have indeed made the Qur'aan easy to understand and remember; then is there any that will remember (or receive admonition).[13]



As for he who gives (in charity) and keeps his duty and fears (Allaah), and believes in al-*Husnaa;*[14] **We will make smooth for him the path of ease.**[15]

Nevertheless it is indeed possible for the likes of these scholars to commit mistakes in the Laws of Allaah, the Most High, but not, however, in the fundamentals aforementioned briefly.[16]

These mistakes must occur; they have to exist because the human is just as Allaah, the Most High, has described him in His saying,

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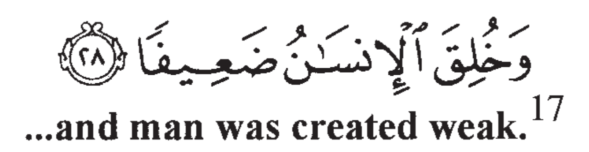
13 Soorah al-Qamar (54):17

14 i.e., to believe in the *Shahaadah* and what it comprises of belief and it's rewarding consequences.

15 Soorah al-Layl (92):5-7

16 This is the condition of the majority of the scholars. Some scholars have however mentioned that a number of scholars fell into error and stood in opposition to certain fundamentals of the *Ahlus-Sunnah* due to their *ijtihaad*.

Shaykh al-Islaam Ibn Taymiyyah states as recorded in *Majmoo' al-Fataawa* (19/191): "...many of the *Mujtahidoon* of the *Salaf* and those later on have said and performed deeds which are innovations. They however, did not know these deeds to be acts of innovation due to weak *hadeeths* which they believed to be authentic, or incorrectly understanding verses of the Qur'aan or due to an opinion they exerted in an issue which had textual evidences they were not aware of..."



...and man was created weak.[17]

Man is weak in his knowledge and perception, and he is weak in his understanding and comprehension. As a result, mistakes will emanate from him in some matters.

Here, I will summarise what I want to mention concerning the causes behind mistakes committed by the scholars into the following six[18] categories. Bear in mind however, that there are many reasons in reality, it is 'an ocean which has no shore'. The one who has insight and knowledge of the sayings of the scholars knows these widely spread causes for the differences.[19]

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17 Soorah an-Nisaa' (4):28

18 The Shaykh in fact mentioned two causes in the first category. They have however been seperated in this translation for reasons of clarity and thus exist in all as seven categories. The origin of this work is a lecture delivered by the Shaykh which is available on tape from *Maktabah al-Wa'yee al-Islaamee*, K.S.A. It has since been published many times, most recently amongst a collection of the Shaykhs statements and rulings on the subject are of 'Knowledge' published by *Daar Ath-Tharayyaa*, Riyaadh. *Kitaab al-'Ilm* p. 265-286.

19 Shaykh-ul-Islaam Ibn Taymiyyah has a work on this subject: *Raf' al-Malaam 'anal-A'immah al-A'laam* (*Lifting the blame off the famous Scholars*). Additionally, Ibn Rushd's work *Bidaayah al-Mujtahid wa-Nihaayah al-Muqtasid* is somewhat unique in often stating reasons for the different stances taken by the scholars in issues of *fiqh*.

The First Cause:
The relevant evidence was not known to the scholar who erred in his judgment.

This reason is not unique to those who came after the era of the Companions, but it includes the Companions themselves as well. I will give two examples involving the Companions for this category:

(i) We know due to the report established in *Saheeh al-Bukhaaree* and other sources, that when the Chief of the Believers 'Umar Ibn al-Khattaab, *radiyallaahu 'anhu*, was travelling to Shaam; along the way, someone mentioned to him that a plague had broken out there. So he stopped and started to seek counsel from the Companions, *radiyallaahu 'anhum*. He counseled both the *Muhaajiroon* and the *Ansaar* and the Companions differed on this issue which resulted in two opinions, the correct one being that they should not travel to Shaam but return to Madeenah. During this deliberation and consultation, 'Abdur-Rahmaan Ibn 'Awf, who had been preoccupied and therefore not initially present, turned up and remarked: "I have with me some knowledge on this matter. I heard the Messenger of Allaah (ﷺ) say, '*If you hear of it (i.e. a plague) being in a land, do not go there, and if it breaks out in a land which you are in, do not leave in flee of it*'."[20]

So, this ruling was unknown to the major Companions from the *Muhaajiroon* and *Ansaar* until 'Abdur-Rahmaan Ibn 'Awf came and informed them of this *hadeeth*.

(ii) 'Alee Ibn Abee Taalib, *radiyallaahu 'anhu*, and 'Abdullaah Ibn 'Abbaas, *radiyallaahu 'anhumaa*, were of the opinion that the woman

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[20] *Saheeh al-Bukhaaree* [Eng. transl. 4/452/no.679] and *Saheeh Muslim* [Eng. transl. 4/1204/no.5504].

whose husband died during her pregnancy, should complete the longer waiting period (*al-'Iddah*),[21] whichever of the two it maybe: either four months and ten days or up until giving birth. Consequently, if she was to give birth before the four months and ten days, her waiting period would not be complete until the four months and ten days elapse. Similarly if the four months and ten days pass and she has not yet delivered, she is to remain in her waiting period until she does so.

This is because Allaah, the Most High, says,

وَأُوْلَٰتُ ٱلْأَحْمَالِ أَجَلُهُنَّ أَن يَضَعْنَ حَمْلَهُنَّ

...and for those who are pregnant, their waiting period is up until they deliver...[22]

وَٱلَّذِينَ يُتَوَفَّوْنَ مِنكُمْ وَيَذَرُونَ أَزْوَٰجًا يَتَرَبَّصْنَ بِأَنفُسِهِنَّ
أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا

...and those of you who die and leave behind wives, they should wait for four months and ten days...[23]

Each verse is more general than the other depending on the angle they are viewed in.[24] The way to reconcile texts of this nature, is to

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[21] The time prescribed by the *Sharee'ah* for a woman to remain without remarrying after being divorced or widowed.

[22] Soorah at-Talaaq (65): 4

[23] Soorah al-Baqarah (2):234

[24] i.e. the first verse concerns the pregnant woman whether divorced or widowed, and the second verse concerns the widowed woman whether pregnant or not. So, the dilemma is: which is the verdict for the woman who is both pregnant and widowed?

reconcile them in a manner which will include both their rulings. There is no way of achieving this except by adopting the position 'Alee and Ibn 'Abbaas, *radiyallaahu 'anhum*, took. However, the *Sunnah* is over and above that; as it has been established from the Prophet in the *hadeeth* concerning Subay'ah al-Aslamiyyah, that she gave birth after the death of her husband by some nights and the Messenger of Allaah permitted her to get married.[25]

The meaning of this is that we stick to and act by the general verdict found in the verse in Soorah at-Talaaq, also known as *Soorah an-Nisaa'as-Sughra*,[26] where Allaah, the Most High, says,



"...and for those who are pregnant, their waiting period is up until they deliver..."

I have no doubt that if this *hadeeth* was known to 'Alee and Ibn 'Abbaas, they would have most definitely adhered to it and not held the opinion they did.

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[25] So, even though 'Alee and Ibn 'Abbaas, *radiyallaahu 'anhum*, put a sound and correct principle into practice, it is not accepted here due to the presence of a direct judgment from the Prophet (ﷺ) on this issue. This is one of numerous evidences for a well established and yet violated fundamental principle which governs the Muslim's attitude towards his religion as a whole, this principle being: The texts of the *Sharee'ah* are given precedence over the human intellect. This does not imply that the human intellect has no role to play, as Allaah has blessed mankind and singled him out with this distinct sublime feature, Allaah has also praised those who use their intellect; but the point here is that the Muslim's relationship to his religion is and always should be via complete submission. Our intellect may well show us why so many things in Islaam are very logical, but it is not because we have understood the wisdom behind a certain ruling that we then choose to follow it. We submit to Allaah's laws because of the very fact that they are His laws and we are His slaves.

[26] i.e. the smaller chapter, which deals with issues concerning women; the main chapter being Soorah an-Nisaa' (4).

The Second Cause:

The relevant *hadeeth* is known to the scholar, but he does not have any confidence in it's narrator and regards it to be in contradiction to a stronger evidence, so he holds on to that which he believes is stronger.

We will put forward another example involving the Companions themselves and not those after them.

Faatimah bint Qays, *radiyallaahu 'anhaa*, was divorced by her husband for the third and final time. He arranged for wheat to be sent to her as a means of sustenance during her waiting period. She, however, belittled it and refused to accept it. They then took their case up with the Prophet (ﷺ), whereupon, he informed her that she in fact had no legal claim to any maintenance nor accommodation.[27] This was so, because it was the last and final irrevocable divorce; and for a woman in such a position, their exists no binding duties upon the (former) husband with respect to maintenance and housing, barring the case of the pregnant woman as Allaah says,



And if they are pregnant, then maintain them until they deliver...[28]

'Umar, to say nothing of his knowledge and excellence, was unaware of this *sunnah* and held the view that the woman in such a predicament was entitled to maintenance and housing. He rejected the *hadeeth* of Faatimah on the basis that she may have forgotten

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27 *Saheeh Muslim* [Eng. transl. 2/769-773].

28 Soorah at-Talaaq (65):6

and remarked: "Are we to leave the saying[29] of our Lord for the saying of a woman, when we know not if she has remembered or forgotten?"

The point in this, is that the Chief of the Believers 'Umar did not have any confidence in the authenticity of this particular piece of evidence. So just as this can happen to 'Umar or any other person from amongst the Companions and their successors, it can equally happen to those after them from amongst the students of the successors and so on until our present time; in fact, this will carry on reoccurring until the Day of Judgment, i.e., that a person holds no trust in the authenticity of a particular evidence.

There are numerous examples from the statements of the scholars; where we notice that some scholars regard a certain *hadeeth* as authentic, so they give judgment in accordance to it. Whilst others see it as being weak so do not consider it, due to a lack of trust as to whether it actually is reported from the Messenger of Allaah ( ).

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[29] The verse 'Umar, *radiyallaahu 'anhu*, is referring to is, "**...and do not turn them out of their (husbands') homes, nor shall they (themselves) leave unless they are guilty of open lewdness...**" [Soorah at-Talaaq (65):1]

The Third Cause:
The *hadeeth* was known to the scholar but he did not recollect it.

How exalted is He (Allaah) Who does not forget! How many people find a *hadeeth* has slipped from their minds or even a verse from the Qur'aan?

The Messenger of Allaah (ﷺ) lead his Companions in Prayer one day and he missed out a verse forgetfully. 'Ubayy Ibn Ka'b was present with him, so when the Prophet finished praying he said (after 'Ubayy informed him): *"Why did you not remind me of it (during prayer)?"*[30]

Note that this incident involves the one to whom revelation is sent down!

Additionally, his Lord said to him,

سَنُقْرِئُكَ فَلَا تَنسَىٰٓ ﴿٦﴾ إِلَّا مَا شَآءَ ٱللَّهُ ۚ إِنَّهُۥ يَعْلَمُ ٱلْجَهْرَ وَمَا يَخْفَىٰ ﴿٧﴾

> **We shall cause you to recite the Qur'aan so that you do not forget (it), except what Allaah wills; He knows what is evident and what is hidden.**[31]

An example for this category is an incident involving 'Umar Ibn al-Khattaab and 'Ammaar Ibn Yaasir, *radiyallaahu 'anhum*. The Messenger of Allaah had sent them on an errand. On their journey one morning, both of them awoke in a state of *janaabah*. 'Ammaar exercised his judgment and saw that the purifying action of the earth

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[30] *Musnad* of Imaam Ahmad & Aboo Daawood [Eng. transl. 1/231/no.907].

[31] Soorah al-A'laa (87):6-7

was the same as that of water. So he rolled around on the earth just as an animal would, in order to completely cover himself with the earth just as it would have been compulsory for him to cover his entire body with water; he then prayed. As for 'Umar, he did not pray.

They later approached the Messenger of Allaah who informed them of the proper manner of action. He said to 'Ammaar: *"It would have been enough for you to do this with your hands: the Prophet struck the ground with his hands once, wiped his left hand on top of his right hand, then he wiped his palms and face."*[32]

'Ammaar used to relate this incident before and during the caliphate of 'Umar. One day, 'Umar summoned for him and said: "What is this *hadeeth* which you keep relating?" So 'Ammaar informed him and said: 'Do you not remember when we were sent by the Messenger on an errand and the state of *janaabah* befell both of us. As for you, you did not pray, and I rolled about on the earth (then prayed) and the Messenger told us: *"It would have been enough for you to do so and so..."* But 'Umar did not recall this and remarked: "Fear Allaah O 'Ammaar!" So 'Ammaar said to him: "If you so desire, as Allaah has made binding my obedience to you, I will stop narrating this incident." 'Umar replied: "We leave you to that which you have adopted." i.e. relate it to the people.

So 'Umar had forgotten that the Prophet allowed *tayammum* for the one in the state of *janaabah*, just as it is allowed for the one who is in the state of minor defilement.

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32 *Saheeh al-Bukhaaree* [Eng. transl. 1/208/no.343] and *Saheeh Muslim* [Eng. transl. 1/202/no.716].

'Abdullaah Ibn Mas'ood agreed with 'Umar in this issue. A dispute on this subject broke out between him and Aboo Moosa. During this dispute Aboo Moosa mentioned 'Ammaar's statement to 'Umar, upon which Ibn Mas'ood said: "Did you not see that 'Umar was not convinced with 'Ammaar's statement." To which Aboo Moosa replied: "Put aside 'Ammaar's statement, what is your reply to this verse[33]?" At that, Ibn Mas'ood remained silent.

There is no doubt, that the correct opinion is with the group who hold that the one in a state of *janaabah* performs *tayammum,* just as the one who is in a state of minor defilement performs *tayammum*.

The point of all this is that a person can forget, whereby he becomes oblivious to the correct legal judgment and therefore gives an incorrect judgment, which he is excused for. However, the one who is aware of the evidence is not excused.

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[33] i.e., the verse, "**...and if you find no water, then perform *tayammum* with clean earth...**" [Soorah al-Maa'idah (5):6].

The Fourth Cause:
The scholar is aware of the evidence but understands it incorrectly.

We shall put forward two examples: the first from the Qur'aan and the second from the *Sunnah*.

(i) Allaah says,

وَإِن كُنتُم مَّرْضَىٰٓ أَوْ عَلَىٰ سَفَرٍ أَوْ جَآءَ أَحَدٌ مِّنكُم مِّنَ ٱلْغَآئِطِ
أَوْ لَٰمَسْتُمُ ٱلنِّسَآءَ فَلَمْ تَجِدُوا۟ مَآءً فَتَيَمَّمُوا۟ صَعِيدًا طَيِّبًا

...and if you are ill, or on a journey, or come after answering the call of nature, or you have been in contact with women and you find no water; then perform *tayammum* with clean earth...[34]

The scholars differed on the understanding of the word لَٰمَسْتُمُ 'contact'. One group understood it to mean 'touching' in it's unrestricted sense. Another group stated that it was a type of contact which induces sexual desire, and yet others held the view that it meant sexual intercourse; this latter view, being that of Ibn 'Abbaas.

If you contemplate upon the verse, you will find that the correct view is with the one who asserts that the intended meaning is sexual intercourse. This is because Allaah mentioned (earlier in the verse) two categories for purification by water: minor ritual purification (*wudoo'*) and major ritual purification (*ghusl*). The first is mentioned when He said,

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[34] Soorah al-Maa'idah (5):6

فَٱغْسِلُوا۟ وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى ٱلْمَرَافِقِ وَٱمْسَحُوا۟ بِرُءُوسِكُمْ
وَأَرْجُلَكُمْ إِلَى ٱلْكَعْبَيْنِ ۚ

...then wash your faces and hands (forearms) up to the elbows, wipe your heads and (wash) your feet up to your ankles...[35]

As for the second category (*ghusl*), Allaah says,

وَإِن كُنتُمْ جُنُبًا فَٱطَّهَّرُوا۟ ۚ

...and if you are in a state of *janaabah*, then purify yourself (i.e., perform *ghusl*)...

The mention, therefore, of the two categories for purification by *tayammum*, would be in keeping with the eloquence and elucidation of the Qur'aan; so the phrase:

أَوْ جَآءَ أَحَدٌ مِّنكُم مِّنَ ٱلْغَآئِطِ

"...or come after answering the call of nature..."

is a reference to what necessitates minor ritual purification and the phrase:

أَوْ لَٰمَسْتُمُ ٱلنِّسَآءَ

"...or you have been in contact with women..."

is likewise, (regarded to be) a reference to what necessitates major ritual purification.[36]

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[35] Soorah al-Maa'idah (5):6

[36] Consequently this would only agree if we regarded the meaning to be sexual intercourse, as it is the only viable explanation here which necessitates *ghusl*.

If, however, we were to explain the word 'contact' to merely mean 'touch', the (latter part of the) verse would contain two references to what necessitates minor ritual purification and would be void of any mention of what necessitates major ritual purification; this would be contrary to the eloquence of the Qur'aan.

Accordingly, those who understood it to mean 'touching', stated: "If a man touches a woman's skin, he nullifies his *wudoo'*"; or "If he touched her with desire, he would nullify it, and if it was to occur without desire, then he would still have his *wudoo'*."

The correct opinion, though, is that it would not nullify his *wudoo'* in both cases. Furthermore, it has been reported from the Prophet (ﷺ) that he kissed one of his wives and then went to pray without performing *wudoo'*; this has been reported via many narrations, each one supporting the other.[37]

(ii) When the Messenger of Allaah (ﷺ) returned from the battle of al-Ahzaab and took off his armour, Jibraa'eel came to him and said: "*We (i.e. the angels) have not yet put down our weapons, so set out for Banee Quraydhah.*" The Messenger of Allaah ordered his Companions to leave for battle and said: "*None of you should pray 'Asr except at Banee Quraydhah.*"[38] The Companions understood this command differently: some thought that the Messenger of Allaah's intention was for them to make haste in setting off so that when the time for 'Asr prayer arrived, they would already be at Banee Quraydhah. Consequently, when the time for 'Asr prayer set in and they were in fact still on their way, they prayed and did not delay it

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[37] *Musnad* of Imaam Ahmad (6/210) & Aboo Daawood, at-Tirmidhee, Ibn Maajah and an-Nasaa'ee in their collections under the Book of *Tahaarah*.

[38] *Saheeh al-Bukhaaree* [Eng. transl. 2/34] and *Saheeh Muslim* [Eng. transl. 3/967/no.4374].

out of it's prescribed time. The other Companions understood the Messenger of Allaah's order to mean that they should not pray 'Asr until they reach Banee Quraydhah. Hence, they delayed their prayer until they reached Banee Quraydhah and therefore prayed it outside of it's time.[39]

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[39] This *hadeeth* is a fundamental evidencefor not rebuking the *Mujtahid* who falls into error when exercising his judgement. This however, is only true when certain conditions are met, some of them are:

(i) The person performing *Ijtihaad* is qualified to do so.
(ii) The particular issue in which he errs in is open to *Ijtihaad*.
(iii) The person exherts his utmost in trying to arrive at the correct ruling. This point is extracted from the original meaning of the word '*Ijtihaad*'.
(iv) The person has some form of evidence which he uses to justify his position.

Only when such conditions are met, is the following *hadeeth* of the Messenger (ﷺ) applicable: "*If a judge gives a ruling upon Ijtihaad and is correct, he will attain two rewards and if he performs Ijtihaad and errs in his ruling then he secures one reward.*" [Related by al-Bukhaaree, Muslim and others].

With all this in mind however, it is not correct to use the *hadeeth* of Banee Quraydhah, as is commonly done, to justify a person's stance on a particular issue.

This is an extremely important matter related to the subject area of 'Differing' mentioned by a number of scholars like Imaam ash-Shaatibee, al-Khattaabee and Ibn Taymiyyah, may Allaah have mercy upon them all.

The notion that because there is a differnce on a particular matter, e.g., with regard to the prohibition of something, it therefore becomes permissible is completely rejected by the *Sunnah*. If we were to accept this then we would declare lawful *riba*, illegal marriages like *mu'tah* and certain intoxicating drinks because the *ummah* differed in these issues!

Allaah has ordered those in dispute to refer back to His Book and the *Sunnah* of His Messenger (ﷺ). Thus, we recognise the existence of differences and take them into account, but do not use it as proof because it is not an evidence in itself.

There is no doubt that the correct position is with those who prayed 'Asr in its time. This is because the texts which make the prayers at their stated times obligatory, are clear and conclusive; and this (*hadeeth*) is a vague text. The sound and correct methodology adopted in such circumstances is to refer the vague text back to the clear and conclusive text.

To summarise, a reason for the differences; is to understand a particular evidence in a different light to the meaning intended by Allaah and His Messenger (ﷺ).

The Fifth Cause:
The scholar is aware of the *hadeeth* but it is in actual fact abrogated.

The *hadeeth* is authentic, its meaning is understood correctly, but it is abrogated. The scholar, however, does not know of its abrogation and in such circumstances is therefore excused, because the basic rule applied is that a text is not judged to be abrogated until there is knowledge of a second abrogating text.

An example of this is Ibn Mas'ood's opinion on the position of a person's hands during *rukoo'*. At the advent of Islaam, the praying person when in *rukoo'* used to put his hands together and place them between his knees. This was the ruling in the early days of Islaam. However, this was later abrogated and the new ruling was for one to place his hands on his knees. The evidence of the abrogation is recorded in *Saheeh al-Bukhaaree* and elsewhere.[40] Ibn Mas'ood did not know of this abrogation, so he always used to place his hands together between his knees. Once Alqamah and al-Aswad[41] prayed at his side; they placed their hands on their knees, whereupon, he prohibited them and ordered them to do as he did. Why? Because he had not known of the abrogation and a person is not burdened with more than he can bear, Allaah says,

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[40] Al-Bukhaaree and other sources.

[41] Alqamah and al-Aswad are two scholars from the *taab'ieen* and famous students of 'Abdullaah Ibn Mas'ood.

لَا يُكَلِّفُ
ٱللَّهُ نَفْسًا إِلَّا وُسْعَهَا ۚ لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا ٱكْتَسَبَتْ ۗ
رَبَّنَا لَا تُؤَاخِذْنَآ إِن نَّسِينَآ أَوْ أَخْطَأْنَا ۚ رَبَّنَا وَلَا تَحْمِلْ
عَلَيْنَآ إِصْرًا كَمَا حَمَلْتَهُۥ عَلَى ٱلَّذِينَ مِن قَبْلِنَا ۚ رَبَّنَا وَلَا
تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِۦ ۖ وَٱعْفُ عَنَّا وَٱغْفِرْ لَنَا وَٱرْحَمْنَآ ۚ
أَنتَ مَوْلَىٰنَا فَٱنصُرْنَا عَلَى ٱلْقَوْمِ ٱلْكَٰفِرِينَ ﴿٢٨٦﴾

Allaah burdens not a soul beyond it's scope. It attains reward for the (good) which it has earned and is punished for the (evil) it has acquired. 'Our Lord! Do not punish us if we forget or fall into error. Our Lord! Do not lay on us a burden like that which you did lay on those before us. Our Lord! Do not burden us with that which we cannot bear, pardon us, forgive us and have mercy upon us. You are our *Mawlaa* (Patron, Supporter and Protector) and give us victory over the disbelieving people.[42]

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[42] Soorah al-Baqarah (2):286

The Sixth Cause:

The scholar believes that the particular evidence in question conflicts with either a stronger text or a consensus of the scholars

In other words, he is aware of the evidence but he sees it to lie in contradiction to a stronger evidence whether it be another text or a consensus of the scholars.

This is frequently found to be the reason for the differing between the scholars.

How often do we hear one asserting that there is a consensus of the scholars on a particular issue? But after examination, no such consensus has in fact taken place.

One of the most amazing cases to have been recorded in relation to this, is that a group related that there was a consensus of the scholars on the acceptance of a slave's testimonial; whilst others, reported that there was a consensus on the rejection of a slave's testimonial! This is indeed a most peculiar recording of events.

This occurs, because for a certain type of individual; if he is surrounded by people who agree with him on an issue, he believes that not a single person disagrees with him, because of his full conviction that this judgment is exactly what the texts imply. Therefore, two evidences form in his mind: the text and a consensus of the scholars. Furthermore, he may even feel that this judgment is supported by correct analogical deduction (*qiyaas*) and sound reasoning.

So, in concluding, he judges that no one differs on this text which to him is aided by correct analogical deduction. However, the truth of the matter is the complete opposite.

It is possible to put forward as an example for this category, the position held by Ibn 'Abbaas on *ribaa al-fadl.*[43]

The Messenger of Allaah (ﷺ) has said: *"Ribaa is only (earnt) in (transactions of) an-nasee'ah."*[44]

He has also been reported by 'Ubaadah Ibn as-Saamit and other Companions to have said: *"Ribaa is (earnt) in (transactions of) an-nasee'ah and az-ziyaadah"*[45]

The scholars after Ibn 'Abbaas have all agreed that *ribaa* is of two types: *al-fadl* and *an-nasee'ah.* As for Ibn 'Abbaas, he was adamant that *ribaa* only occurred in *an-nasee'ah.*

An example of *ribaa al-fadl* is if a person sells a measure of wheat for two measures and the exchange is made on the spot; this would not be classified as *ribaa* according to Ibn 'Abbaas, as he sees that *ribaa* is only in *an-nasee'ah.*

Similarly, if one sells a gram of gold for two grams and the exchange is made on the spot, it would not be *ribaa* according to Ibn 'Abbaas; however, if the exchange did not take place there and then, whereby the first party surrenders the gram of gold and the second party does not hand over the two grams until later on after they separate, then this would be classified as *ribaa.*[46]

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[43] *Ribaa* (illegal profit) is of two types:
an-nasee'ah (usury): Illegal profit earnt on a lent commodity.
al-fadl (or *az-ziyaadah*): Illegal profit earnt by exchanging the same commodity differing in quality.

44 Collected by Muslim.

45 Collected by Muslim.

[46] As it now falls under the category of *an-nasee'ah* of which, there is no difference as to it's prohibition between Ibn 'Abbaas and the rest of the scholars.

This is because Ibn 'Abbaas held that the limitation[47] prevented *ribaa* from occurring in any other type of transaction besides *an-nasee'ah.*

It is a common fact that'only', does imply limitation and therefore indicates that any form of transaction besides *an-nasee'ah* is not *ribaa*, but the truth of the matter is that the *hadeeth* related by 'Ubaadah shows that transactions of the nature of *al-fadl* is indeed actually a type of *ribaa*, due to the Prophet's statement: "*Whosoever increases or asks for an increase, has indeed dealt with ribaa.*"

Anyhow, what should our position be regarding the *hadeeth* Ibn 'Abbaas used as evidence?

Our position is to understand it in a manner which will harmonise it with the other *hadeeth* that includes *al-fadl* to also be a type of *ribaa*; so we hold: 'The severe form of *ribaa* which the people in the days of ignorance used to deal in, and which is stated in the verse,



O you who believe, do not consume *ribaa* doubled and multiplied...[48]

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[47] i.e. the limitation mentioned by the Prophet in the first *hadeeth* when he said: "*Ribaa* is **only** (earnt) in (transactions of) *an-nasee'ah*" Accordingly, Ibn 'Abbaas held that if the same commodity which differed in quality was exchanged, it would not be *ribaa*; but, if the exchange did not happen on the spot, then it would be *ribaa* as it falls under *an-nasee'ah* due to the element of time now being introduced.

[48] Soorah Aal-'Imraan (3):130

is none other than *ribaa an-nasee'ah*. As for *ribaa al-fad̲l*, it is not the gross or severe form of *ribaa*.[49] This is why Ibn al-Qayyim held the view in his book *I'laam Al-Muwaqqi'een* that the prohibition of *ribaa al-fad̲l* was from a precautionary measure and not due to the type of transaction itself.

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[49] i.e., relatively speaking as is clear from the context. The many verses of the Qur'aan and *h̲adeeths* of His Messenger (ﷺ) show the magnitude of this sin and it's threatening consequences and punishments. To mention a few: Those who deal in it will be resurrected from their graves and stand up from it like insane people, they have been threatened with Hell-Fire, labelled as extremely ungrateful and sinful people, and have been cursed. Allaah and His Messenger have given a notice of war to the person who deals in it as he is regarded to be an enemy. Allaah deprives the money earnt from *ribaa* of any blessing and the Prophet (ﷺ) listed this sin as one of the seven deadly sins.

The Seventh Cause:
The scholar gives a ruling on the basis of a weak *hadeeth*, or his argumentation and deduction is poor.

This is also quite common. An example of using a weak *hadeeth* as evidence, is the recommendation given by some scholars on *Salaah at-Tasbeeh*[50]:

It comprises of two units of prayer (*rak'ahs*), *al-Faatihah* is recited in both of them, *tasbeeh* is mentioned fifteen times and likewise when bowing and in prostration and so on, the details of which, I am not fully aware of as I do not believe it to be sanctioned. Others hold it to be a detested innovation and the *hadeeth* on it to be unauthentic, like Imaam Ahmad who said: "It's *hadeeth* is not authentic from the Prophet" and Shaykhul-Islaam Ibn Taymiyyah who said: "It's *hadeeth* is a lie on the Prophet."

In reality, whoever examines it will find odd peculiarities even from the angle of legislation; Since, worship is either beneficial for the heart, and it is a must that the heart is able to attain righteousness from it, so it is legislated for all times and places, or it is not of benefit and is therefore not sanctioned. As for this particular prayer, it's *hadeeth* mentions that a person prays it every day or every week or every month or once in his lifetime. There is no form of worship of it's like in the *Sharee'ah*, so it is very irregular and suspect from both the actual text and it's chain of narration, and whoever de-

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[50] The question of the authenticity of this prayer is an old one and the Shaykh holds the view that it is not legislated. Amongst those who wrote in it's favour is the great scholar Ibn Naasir ad-Deen ad-Dimashqee in his treatise *At-Tarjeeh Li Hadeeth Salaah at-Tasbeeh*. An excellent contemporary work is *At-Tanqeeh Li Maa jaa'fee Salaah at-Tasbeeh* by Shaykh Jaasim al-Faheed ad-Dawsaree. The book *The Three Abandoned Prayers* by Shaykh Adnaan Aali 'Uroor has recently been translated in English and published. It also supports the view affirming the legality of the prayer and Allaah knows best.

clared it to be a lie like Shaykhul-Islaam is correct, with this, he also mentioned that none of the Imaams recommended it.

I put forward this particular issue as an example due to the many questions asked concerning it. I fear that this innovation has become an acceptable form of worship, and I stress it as being an innovation, because, even though this ruling may be very difficult for some people to handle, we believe that anyone who worships Allaah with something not found in the book of Allaah nor in the *Sunnah* of His Messenger (ﷺ), then that act is an innovation.

An example of poor deduction, i.e., when the evidence is strong but using it to prove a certain point is not sound, is the position held by some scholars regarding the *hadeeth* related by Aswad: "*The slaughtering of the foeteus is (covered by) the slaughtering of it's mother*.[51]"

It is of common knowledge amongst the scholars that the meaning of this *hadeeth* is that if a pregnant animal is slaughtered, then this is also a slaughtering of the foetus contained inside it, i.e. there is no need to take hold of the foetus and slaughter it after it is removed from the animal, because it is already dead and there is no point or benefit derived by slaughtering it after it's death.

However, some scholars understood the *hadeeth* to be that the slaughtering of the foetus is carried out in the same way as it's mother's;[52] by severing the two jugular veins and allowing the blood to flow out. This is however, far-fetched, and what makes it so, is the fact that blood does not flow out after death.

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[51] Related by Ahmad (3/39), at-Tirmidhee, Ibn Maajah, ad-Daarimee and others.

[52] i.e., they read the *hadeeth* to be: "*The slaughtering of the foetus is (similar to) the slaughtering of it's mother*."

The Messenger of Allaah (ﷺ) has said: "*That (i.e. the animal) which blood flows out of and the name of Allaah is pronounced over (at the time of slaughtering), then eat*" and it is a known fact that the blood cannot flow out after death.

These are the causes (of difference amongst the scholars) which I wanted to point out, even though, there are many more and it is 'an ocean which has no shore'.

Our Stance Towards the Differences Amongst the Scholars

As I mentioned at the beginning, due to the many forms of media: audio, visual and written material and due to the differences amongst the scholars or those who speak across this media, the general masses have become dubious, and question: "Who do we follow?"

'*The gazelles have gathered in great numbers around Khirash to the extent that Khirash no longer knows which to hunt.*'[53]

I say therefore, our stance towards this differing, and I mean the differing between the scholars who are well trusted for their knowledge and religion, not those who have been classified as being upon knowledge but are not in fact from the people of knowledge. As we do not regard the likes of such as scholars, nor do we hold that their statements are to be known and recorded like the statements of the people of knowledge.

But who we mean, are the scholars who are well known for their sincere advise to the *ummah*, for their Islaam and knowledge; our stance towards them is from two angles.

The first: How did these scholars go against what the Book of Allaah and the *Sunnah* of His Messenger (ﷺ) instruct?

The answer to this question can be known in part by what has preceded of the causes for differing and also by the other many causes

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[53] An Arabic proverb applied to a person overcome by too many affairs, each one of equal priority and thus, he is unsure which to begin with and which to defer. The origin of this proverb traces back to a hunter of gazelles known as Khirash. On one particular day, they gathered around him in great numbers whereby he became confused on how to confront the situation and which gazelle to hunt; upon that he uttered these words portraying the situation. It's relevance here is due to the presence of a number of opinions on one single issue causing confusion for the layman in need of a judgment.

not mentioned, which the student of knowledge will come across and come to realise even if he is not very knowledgeable.[54]

The second: What is our stance towards following them? Whom do we follow from amongst these scholars? Does one follow a particular *Imaam* and never leave his saying? Even if the correct opinion is with another scholar, as is the norm with the blind followers of the *madhhabs*. Or does one follow the opinion which he believes is the most accurate, even if it is against the opinion of the *madhhab* which he attributes himself to?

The correct answer is the second, as it is compulsory upon the one who is aware of the evidence to follow it, even if it goes against whomsoever of the scholars, so long as it does not go against a consensus of the *ummah*.

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[54] Shaykh Ibraaheem ar-Ruhaylee, a lecturer at the Islamic University in Madeenah, states the following words when referring to the ten causes of differences mentioned by Shaykhul-Islaam Ibn Taymiyyah: "Within these causes is found an excellent and agreeable explanation for the mistakes commmitted by scholars as a result of their *ijtihaad*. It is also a way of seeking excuses for them in such a manner by which, we hope that Allaah rewards Shaykhul-Islaam with the highest reward.

"If only the person, who comes across a statement of a scholar which is found to be in opposition to the texts (of the *Sharee'ah*), was to subject it to these ten causes which Shaykhul-Islaam mentions, then he would surely find and pinpoint one of these causes as a reason for the scholar's opposition. In turn, we would deliver ourselves from the vilification and bad suspicion of the scholars which so many people in our time have fallen into." [taken from *Mawqif Ahlus-Sunnah wal Jamaa'ah min Ahlil Ahwaa wal Bida'* by Shaykh Ibraaheem ar-Ruhaylee (1/70), published by *Maktabah al-Ghurabaa al-Athariyyah*, Madeenah, Saudi Arabia.]

The application of these words is of crucial importance in helping to nurture and cultivate the Muslims, the youth especially, towards a balanced and middle path. Since, as history has repeatedly shown, when ever the value and respect for scholars dissappear from the hearts and minds of the people, then they are no longer lead by knowledge, wisdom and experience, but rather, by immaturity, rashness and enthusiasm based on ignorance.

Whoever believes that it is obligatory to follow the sayings of someone other than the Messenger of Allaah (ﷺ), acting by what he orders and refraining from what he prohibits, at all times and places, has indeed affirmed for this person qualities unique and solely for the bearer of the Message, because no one's statement can posses this unequivocal right except that of the Messenger of Allaah's (ﷺ). Everyone's opinion is either accepted or rejected, except that of the Messenger of Allaah (ﷺ).

But the issue still remains unsolved, because we still question: "Who has the capability to extract the rulings from the texts?" Here, lies a problem, because everyone is now stating: "I am capable of that!" This, in reality, is not correct nor befitting. Indeed, in terms of the objective and basis, it is a good thing for one's guiding principle to be the Book of Allaah and the *Sunnah* of His Messenger (ﷺ); but to open the door for anyone who can mention the evidence, even if he does not understand its meaning or implication, and to say: "You are a *mujtahid*, say what you desire"; this will cause the ruin of the *Sharee'ah*, people and society.

In this respect, people are placed in one of three categories:

(i) The scholar whom Allaah has given knowledge and understanding.
(ii) The student of knowledge who has some knowledge, but has not yet reached the level of the scholar.
(iii) The layman who does not know anything.

As for the first, then he has the right to perform *ijtihaad* and to give his opinion. In fact, it is compulsory for him to express that which he believes the texts indicate regardless of whom he opposes, because he has been ordered to do so. Allaah says,



...those amongst them who have the ability to extract it's rulings would have understood it directly from them...[55]

The person in this category is from those who are able to extract rulings, who know the intended meaning behind the Speech of Allaah and His Messenger (ﷺ).

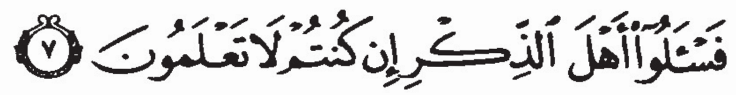
As for the second, whom Allaah has given knowledge but has not yet reached the level of the first. Then there is no harm on him to act by the general evidences, their apparent meanings and by that which he becomes aware of[56]. However, he must be very careful in this and he should never fall short in asking those more knowledgeable than him from amongst the people of knowledge. As he can fall into error and his knowledge may not embody a particular evidence which makes specific what seems to be a general text, or which restricts what seem to be an unrestricted text, or which abrogates a text that he regards to be valid.

As for the third, he is the one who does not have any knowledge; it is compulsory upon him to ask the people of knowledge as Allaah says,

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[55] Soorah an-Nisaa' (4):83

[56] Scholars past and present have warned against the pitfalls, which the student of knowledge who has not yet established himself sufficiently in the basix sciences of the *Sharee'ah*, can fall into. The Shaykh has mentioned some of the important guidelines which the person, who is eligible to be classified in this category, myst adhere to; such as being deliberate, not hasty, quesioning the people of knowledge and referring back to them.



...so ask the people of the scriptures if you do not know.[57]

and in another verse He says,

فَسْـَٔلُوٓاْ أَهْلَ ٱلذِّكْرِ إِن كُنتُمْ لَا تَعْلَمُونَ ﴿٤٣﴾ بِٱلْبَيِّنَٰتِ وَٱلزُّبُرِ

...so ask the people of the scriptures if you do not know, of the clear signs and books...[58]

So his duty is to ask, but who does he ask? In the land are many scholars and everyone says 'So and so is a scholar' or it is said about everyone: 'He is a scholar'. So, who does he ask?

Do we say: "It is obligatory on this person to search and investigate in order to find the one closest to the correct opinion, so that he asks him and acts by his ruling." or do we say: "He is to ask anyone whom he believes to be from the people of knowledge, since, the scholar who is less knowledgeable may arrive to the correct decision in a specific issue and the scholar who is better and more knowledgeable than the former may not" - the scholars differed on this:

A group of the scholars are of the opinion that it is compulsory for the layman to ask the one whom he believes to be the most competent in his knowledge from amongst the scholars in his country; because, just as the person who is sick, looks for the most competent person in the field of medicine, then the same applies here, as knowledge is the remedy for the hearts. Accordingly, you must choose the most competent in knowledge as there is no difference.

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[57] Soorah al-Ambiyaa' (21):7

[58] Soorah an-Nahl (16):43-44

Other scholars hold the view that it is not compulsory because the one who is the most knowledgeable may not be so in every single issue and this opinion is supported by the fact that at the time of the Companions people would ask one who was less knowledgeable than others who were also present.

My view is that he should ask the one whom he believes to be the most competent in his religion and knowledge. Not because it is compulsory, due to the possibility of this scholar making an error in a specific issue and the possibility of the one who is less knowledgeable to be correct, but because it is preferable and should be the person's first choice.

Finally, I sincerely advise, myself first, and my Muslim brothers, especially the students of knowledge not to make haste and be quick when a new issue befalls a person until he verifies the situation, gains knowledge and then speaks, so that he does not speak about Allaah without knowledge.

As, the person who gives judgment is an emissary between the people and Allaah; he conveys the *Sharee'ah* of Allaah as has been reported from the Messenger of Allaah (ﷺ): "*The scholars are the inheritors of the Prophets.*"[59] and the Prophet (ﷺ) has also said: "*The judges are three: (only) one of the judges being in paradise and he is the one who knew the truth and judged according to it.*"[60]

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[59] Ahmad (5/196), Aboo Daawood, at-Tirmidhee and others.

[60] Related by Aboo Daawood with the following wording: "*The judges are three; one of the judges is in Paradise and two are in the Fire. With regards to the one in Paradise then he is the man who knew the truth and judged according to it. The man who knew the truth and was unjust in his ruling is in the Fire, and the man who judged between the people out of ignorance is in the Fire.*"

Also of importance, when a new issue befalls you, draw your heart towards Allaah and feel in need of Him so that he causes you to understand and imparts knowledge to you; especially in grave and important matters, where many people remain in ignorance.

Some of my teachers mentioned to me that it is befitting for the person who has been questioned on an issue, to seek forgiveness from Allaah even more; deducing that from Allaah's statement,

إِنَّآ أَنزَلْنَآ إِلَيْكَ ٱلْكِتَٰبَ بِٱلْحَقِّ لِتَحْكُمَ بَيْنَ
ٱلنَّاسِ بِمَآ أَرَىٰكَ ٱللَّهُ ۚ وَلَا تَكُن لِّلْخَآئِنِينَ خَصِيمًا ﴿١٠٥﴾
وَٱسْتَغْفِرِ ٱللَّهَ ۖ إِنَّ ٱللَّهَ كَانَ غَفُورًا رَّحِيمًا ﴿١٠٦﴾

Surely, We have revealed to you the Book in truth that you may judge between the people by that which Allaah has shown you, so do not be a pleader for the treacherous. And seek the forgiveness of Allaah, certainly, Allaah is ever Oft-Forgiving, Most Merciful.61

An increase in seeking forgiveness necessitates the wiping away of the repercussions of sins, which is one of the causes of forgetting knowledge and becoming ignorant, as Allaah says,

فَبِمَا
نَقْضِهِم مِّيثَٰقَهُمْ لَعَنَّٰهُمْ وَجَعَلْنَا قُلُوبَهُمْ قَٰسِيَةً ۖ
يُحَرِّفُونَ ٱلْكَلِمَ عَن مَّوَاضِعِهِۦ ۙ وَنَسُوا۟ حَظًّا مِّمَّا
ذُكِّرُوا۟ بِهِۦ ۚ

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61 Soorah an-Nisaa' (4):105-106

> **So, because of their breach of their covenant, We cursed them and made their hearts grow hard. They change the words from their proper places and forgot a good part of the message that was sent to them.**[62]

Imaam ash-Shaafi'ee once said:

> *I complained to Wakee'[63] about my poor memory.*
> *So he advised me to abandon disobedience.*
> *and he said, 'know that knowledge is light.*
> *And the light of Allaah is not bestowed upon a disobedient.*

So it is certainly possible that seeking forgiveness causes Allaah to give a person enlightenment.

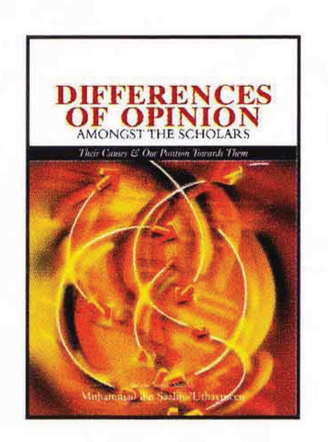
I ask Allaah to grant me success, make me upright, that He keeps us firm with the Firm Word (*Shahaadah*) in this life and the Hereafter; and that He does not cause our hearts to deviate after having guided us and to grant us from His self, mercy; Indeed, He is the Benevolent.

All praise is for Allaah alone, and may He praise, send peace and blessings upon our Prophet Muhammad and his Companions.

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62 Soorah al-Maa'idah (5):13

63 Wakee' Ibn al-Jarraah was a famous scholar from the *Salaf* and one of the teachers of Imaam ash-Shaafi'ee. He died in the year 196H.



DIFFERENCES OF OPINION

AMONGST THE SCHOLARS

Their Causes & Our Position Towards Them

This is the English translation of the booklet *"Al-Khilaaf Baynal 'Ulamaa Asbaabuhoo wa Mawqifunaa Minhoo"* by the great scholar Shaykh Muhammad Ibn Saalih al-'Uthaymeen, may Allaah preserve him and increase him in good.

It is hoped that this book, although small in size, will have an impact in explaining this vital subject. *Inshallaah,* one who studies this book will increase in his respect for the scholars and in his tolerance towards his brothers who hold valid opinions which may differ from his.



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